

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

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| DEVERON MURPHY, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 3:08-cv-00745-JPG |
| |) | |
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM AND ORDER

This matter comes before the Court on Defendant United States of America's (hereinafter "the Government") Motion to Dismiss (Doc. 10). The Court ruled on much of said motion in its Memorandum and Order (Doc. 18) of August 19, 2010, but one thing it did not rule on was whether Plaintiff Deveron Murphy's medical malpractice claim should continue.

In its dismissal motion, the Government maintains that the medical malpractice claim, brought pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2617-2680, fails to comport with Illinois law, which provides, in pertinent part, as follows: "[i]n any action, whether in tort, contract or otherwise, in which the plaintiff seeks damages for injuries or death by reason of medical, hospital, or other healing art malpractice, the plaintiff's attorney or the plaintiff, if the plaintiff is proceeding pro se, *shall* file an affidavit" from a medical professional indicating the plaintiff's claim has merit. 735 Ill. Comp. Stat. Ann. 5/2-622 (West 2010) (emphasis added). Having been granted leave to file the requisite affidavit, Murphy has now filed a letter and "Certificate of Probable Cause" from Maria Lombardo, Doctor of Osteopathy, stating, *inter alia*, that "there is merit to [Murphy's] malpractice claim" and "there is clear merit to [Murphy's] cruel and unusual punishment claim." Doc. 27-1.

The Court has no reason to believe that Dr. Lombardo's letter is insufficient for purposes of 735 ILCS 5/2-622. *See Sullivan v. Eichmann*, 213 Ill.2d 82, 85 (Ill. 2004). Being fully advised of the premises, especially the Court's previous representations, Doc. 18, p. 8 ("If Plaintiff [files the appropriate documents, the Government's] motion shall be denied as moot."), the Court **DENIES** the instant motion (Doc. 10) **as moot**.

IT IS SO ORDERED.

DATED: December 3, 2010

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE